IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22323 of 2006
With
SPECIAL CIVIL APPLICATION No. 22257 of 2006

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAURASHTRA RACHANATMAK SAMITI THRO.SECRETARY & AS AUTHO.PER- - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
SPECIAL CIVIL APPLICATION No. 22323 OF 2006.
MR RM CHHAYA for Petitioner(s) : 1.
MS ARCHANA RAWAL, AGP. for Respondent(s) : 1.
NOTICE SERVED BY DS for Respondent(s) : 1.
MR YF MEHTA for Respondent(s) : 2.
DS AFF.NOT FILED (N) for Respondent(s) : 3.
MR MI MERCHANT for Respondent(s) : 4.
SPECIAL CIVIL APPLICATION No. 22257 OF 2006.
MR N.D.NANAVATI, SENIOR ADVOCATE WITH MR. NIRAD D.BUCH for petitioner.
MS ARCHANA RAWAL, AGP. for Respondent No.1.
MR Y.F.MEHTA for Respondent No.2.
MR M.I.MERCHANT for Respondent No.4.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
Date : 10/01/2007
COMMON **JUDGMENT**

1 Both these petitions challenge one order dated 2.8.2006 made by Gujarat Revenue Tribunal in Revision Application No. TEN. A.R. 1/03 and hence, both these petitions are heard together and disposed of by a common judgment. In light of the view that the Court is inclined to take, the matters have been heard finally. **Rule**. Learned Advocates appearing on behalf of the respective respondents in both the petitions waive service of Rule.

2 A Trust known by the name of Saurashtra Rachanatmak Samiti, Rajkot was holding properties consisting of shed No.20 comprising of building and appurtenant land, as well as adjoining plot Nos. 63 and 64. The total area of the land in question was 3223 sq.yds. Admittedly the land is a lease hold land for a period of 99 years, while the shed was taken on hire purchase terms from Gujarat Industrial Development Corporation on 30.8.1973. On 1.1.2002 the Trust entered into a leave and licence agreement with one N.J.Patel Brass Works, Rajkot for a period of 11 months at a monthly premium of Rs.33,500/-. Subsequently on 3.7.2002 the Trust resolved to dispose of the aforesaid property and for this purpose a copy of the resolution passed by the Board of Trustees accompanied by Valuation report was submitted before the Charity Commissioner seeking permission to alienate the property. On 30.8.2002 the Joint Charity Commissioner issued a Public Notice published in local daily newspaper “Fulchhab” (erroneously mentioned as “Akila” by the Tribunal). The public notice invited objections within fifteen days fixing 28.9.2002 as the date of hearing of the objections. It was further stated in the public notice that the property in question was to be disposed of for a total sum of Rs.1.61 crores in

favour of M/s. Patel Brass Works.

3 The record reveals that one Shri Rajendrakumar L. Mata filed objection on 17.9.2002 and one Shri Mukesh Jayantilal Jani filed objection on 10.9.2002. Shri Jani had stated in his objection that he was ready and willing to purchase the property for a sum of Rs.1.75 crores but on the date of hearing of the objections he did not remain present and requested for adjournment. The same was the position in relation to Shri Rajendrakumar L. Mata. The Joint Charity Commissioner after hearing the representative of the Trust rejected the request for adjournment made by the two objectors and came to the conclusion that on account of recession in the Khadi Industry the Trust was unable to continue with the production of Amber Charkhas in absence of any fresh orders in the preceding three years and therefore the Trust was found to be in the need of to dispose of the lease hold rights of the industrial shed and two plots. The Joint Charity Commissioner further held that as the offered price of Rs.1.61 crore was above the valuation of Rs.1.51 crores the proposal made by the Trust was legal and proper. The Joint Charity Commissioner therefore accorded his sanction on 3.10.2002. In the order it was further mentioned that the permission would remain operative for a period of six months within which time the trustees were required to act in furtherance of the proposal. The order made by the Joint Charity Commissioner came to be challenged by respondent No.4 herein.

4 It is an admitted position that the appellant did not remain present at the time of hearing of the appeal before the Tribunal, but after taking into consideration the grounds raised in the Memorandum of Appeal and the records and proceedings, the Tribunal came to the conclusion that for obtaining the best value of the properties of the trust the

trustees ought to have applied for inviting competitive bids and the Joint Charity Commissioner ought to have, instead of inviting only objections, invited open bids after directing the trust to have the property vacated on expiry of the lease period. While disposing of the appeal the Tribunal has also made certain observations as regards method adopted by the trustees as well as intentions of the trustees in disposing of the property. Ultimately in the operative portion the Tribunal has quashed and set aside the order dated 3.10.2002 made by the Joint Charity Commissioner and restored the matters back to the Joint Charity Commissioner with a direction to invite competitive offers through a public advertisement in a local newspaper having wide circulation so as to dispose of the lease hold rights held by the trust to the best advantage of the trust. It is this order which is under challenge.

5 Special Civil Application No. 22323 of 2006 has been filed by the Trust while Special Civil Application No. 22257 of 2006 has been filed by the person who has purchased property in pursuance of the sanction accorded by the Joint Charity Commissioner. In both these petitions : the contentions raised on behalf of both the petitioners overlap to a certain extent. However, on behalf of the trust it was submitted that observations made by the Tribunal regarding the trustees adopting a devious method to dispose of the properties of the trust as well as the intentions of the trustees in initially letting out the property on leave and licence and subsequently disposing of the lease hold rights are not supported by any cogent evidence and the Tribunal ought to have refrained from making such sweeping observations on the basis of various surmises and conjectures.

6 It was further submitted on behalf of both the petitioners that firstly, the appellant before the Tribunal had not established as to how

he was an aggrieved person so as to entitle him to challenge the order made by the Joint Charity Commissioner; secondly, even if the appellant was treated to be a person aggrieved, the appellant had failed to establish as to what was the interest that the appellant had; and lastly, the appellant had not been able to show even before the Tribunal that there was any offer for a sum higher than the one at which the property was sold and no evidence was forthcoming even in course of the hearing of the appeal that any further offers were likely or had been made by any party. Therefore, according to the petitioners, the impugned order suffered from legal infirmity taking into consideration the principles applicable for exercise of powers under section 36 of the Bombay Trust Act, 1950 and the impugned order was required to be quashed and set aside upholding the order made by the Joint Charity Commissioner.

7 As against that Mr.Y.F.Mehta, learned Advocate appearing on behalf of the Joint Charity Commissioner supported the impugned order on the ground that no prejudice was caused to either side and the trust was likely to benefit if a larger price was realised upon invitation of open competitive bids. That in so far as the purchaser was concerned he could not claim any equity in relation to a public trust property once the Tribunal was of the opinion that the procedure adopted for disposal of the property was not proper.

8 Mr.M.I.Merchant, learned Advocate appearing on behalf of respondent No.4, original appellant before the Tribunal, supported the order of the Tribunal pointing out the fact that the appellant had produced along with Memorandum of Appeal a Valuation report which went to establish that the property was having a higher value with a difference of at least Rs.30 lacs considering the valuation report

produced before the Tribunal showing the valuation at a figure of Rs.1.91 crores and odd. He therefore submitted that once the Tribunal had come to the conclusion that the property ought to have been disposed of by inviting competitive bids from open market this Court should not interfere as the same was ultimately in the interest of a public trust. Responding to the contention raised on behalf of the petitioners that the appellant could not satisfy the test of being an aggrieved person, Mr.Merchant submitted that once the property was a public trust property the concept of an aggrieved person had to be tested in light of the statute in question and taking into consideration the interest of the trust to realise the best price for the trust property. Alternatively, it was submitted that in case the Court was not inclined to uphold the order of the Tribunal the order made by the Tribunal may be set aside but the matter be restored to the original authority viz. Joint Charity Commissioner to undertake the exercise denovo after recording fresh findings.

9 In the case of *Thakorebhai Gangaram Vs. Ramanlal Maganlal Reshamwala, 1993(1) G.L.H. 473* this Court while dealing with the powers of the Charity Commissioner has enunciated the following three principles for the purpose of exercising powers under section 36 of the Act.

> *"4. xxx xxx xxx It is very obvious that before Charity Commissioner sanctions alienation of trust property he has to apply his mind to following material questions, namely (i) whether there is a compelling necessity to justify the alienation in question ?, (ii) whether the proposed alienation is*

fair and just ?, (iii) whether the proposed alienation, in any way , adversely affects the interest of the trust?"

10 It is well settled that an appellate authority has powers which are co-terminus and co-extensive with that of the original authority and hence while dealing with an appeal under section 36(3) the Tribunal is required to exercise the same powers and apply the same tests. When the impugned order is examined in aforesaid context it becomes apparent that except for a passing observation by the Tribunal that the necessity for disposal of the properties of the trust is not well established, there is no other finding in relation to the other two principles enunciated by this Court. Even the finding as to the necessity for disposal of the properties of the trust does not state as to how the same is not established when one considers the finding recorded by the Joint Charity Commissioner. It is equally well settled that when an appellate authority wants to reverse a finding recorded by an original authority it has to assign reasons, howsoever brief. Except for recording the finding of the Charity Commissioner the impugned order does not state as to how and why and in what manner the said finding is incorrect. Therefore, the Tribunal has failed, in the first instance, to determine as to whether the alienation of the trust property is in consonance with the principles enunciated by this Court.

11 Section 36(3) of the Act stipulates that any person aggrieved by such decision may appeal to the Tribunal within

prescribed period of limitation. The decision referred to in sub-section (3) of Section 36 of the Act is the decision taken by the Charity Commissioner under sub-section (1) of Section 36 of the Act and communicated under sub-section (2) of Section 36 of the Act. Thus on a plain reading it becomes apparent that a person has to be aggrieved by a decision of the Charity Commissioner whereby previous sanction to alienate the trust property by any of the modes stipulated in clause (a) or (b) of sub-section (1) or section 36 of the Act is granted. In other words the first requirement for an appeal to be validly entertained by the Tribunal is to test as to whether the appellant before the Tribunal is a person aggrieved by a decision of the Charity Commissioner. In the case of *Lalbhai Trading Company Vs. Union of India, 2006(1) G.L.R.497* this Court after considering various pronouncements made by the Apex Court has culled out the following principles in relation to the phrase '*person aggrieved*'.

> *"14. On a conspectus of the aforesaid case-law it becomes clear that the words 'person aggrieved' are required to be ascertained with reference to the purpose of the provisions of the statute in which they occur. The meaning may vary according to the context of the statute. However, one thing is certain, a person can be said to be aggrieved if a legal burden is imposed on him which may be in the form of being denied or deprived of something to which such person is legally entitled.*

[a]The meaning of the words 'aggrieved person' cannot be read as an expression which is rigid, exact and comprehensive. Apart from the content and intent of the statute, the specific circumstances of the case, the nature and extent of the person's interest, and the nature and extent of the prejudice or injury suffered by the person are relevant factors.

[b] The duty of the Court is to read into the statute, a duty to act fairly in accordance with the principles of natural justice. If a person suffers a wrong as a result of unfair treatment on the part of the authority, he is a person who has suffered a legal grievance, against whom a decision has been pronounced which decision has either wrongfully deprived him or wrongfully refused him something or wrongfully affected his title to something. In other words, the person must have suffered a legal wrong or injury, in the sense, that his interest is prejudicially and directly affected by the act or omission of the authority.

[c] The grievance has to be his own beyond some grievance or inconvenience suffered by him in common with the rest of the public. The test is : can the person be said to be entitled to object and be heard by the authority before the authority takes the impugned action.

[d] The person has to be directly and immediately affected. An aggrieved party is one whose personal, pecuniary or property rights are adversely affected by another person's

action or by a decree or judgment by a Court.

[e] An appeal can be preferred from every original decree or from every decree passed in appeal. The appellant must be a person aggrieved by a decree not merely by a finding. The person must be prejudicially or adversely affected by the decree. In other words, when a person is fastened with liability whereunder his property, of every type, is directly affected. To put it differently, is the person, by virtue of the decree, called upon to discharge a pecuniary liability so as to deprive him of his property. If the answer is yes, he is an aggrieved person".

12 Applying the aforesaid tests the moot question is whether the appellant before the Tribunal could be said to be a person aggrieved within the meaning of the said phrase as appearing in sub-section (3) of Section 36 of the Act. In the impugned order the Tribunal has in paragraph 6.1. recorded that *"Normally, a person who was party to the proceedings before the lower court may only be considered to be a party interested in the appellate proceedings. But in a matter involving public trust, where the trust is also a body set up by or on behalf of the State or Central Govt. public at large may be said to be interested in the disposal of the assets by that body through a transparent process. Therefore, on a liberal interpretation, the present appellant may be considered to have locus in the filing of the appeal".*

Thus, the Tribunal has come to the conclusion that the appellant, respondent No.4 herein may be considered to have locus in filing the appeal on a liberal interpretation. Even if the concept

of liberal interpretation is accepted as being applicable it cannot be stretched to the extent of converting a statutory appeal into a public interest litigation. However, on going through the aforesaid observations made by the Tribunal it becomes apparent that the Tribunal is not alive to the phraseology used in sub-section (3) of Section 36 of the Act and hence, on this count also the impugned order requires to be interfered with.

13 The principal reason running through the entire order of the Tribunal is that the trust property has been disposed of by not inviting open tenders and thus the trust has been deprived of the opportunity to get maximum value for the disputed properties. The guiding principles for setting aside a completed sale have been enunciated by various decisions of the Apex Court and the conspectus of the entire case law on the subject can be summarised as follows :

> *"14.1 The applicant has to show that there was some material irregularity and fraud. However, an allegation in this regard is not enough. There must be adequate material to substantiate such allegation. Further, the objector must show that such material irregularity resulted in substantial injury to the objector. In absence of such pleading and evidence in support thereof it is not open to set aside an auction sale (Ref : Shri Ram Maurya V. Kailash Nath and others, AIR 2000 SC 3402 – Shri Ram Maurya Vs. Kailash Nath and others).*
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> *14.2.Other factors which would come into consideration are*

where the sale is conducted with undue haste without any reserve or upset price being fixed; the valuation itself is suspect and there is inadequate publicity resulting into situation where best possible price was not procured. These factors cumulatively would affect an auction sale and would permit the Court to set aside the same considering the Companies (Court) Rules, 1959. (Ref. AIR 1999 SC 1715 Allahabad Bank etc.etc. Vs. Bengal Paper Mills Co. Ltd. & Others).

14.3 As already stated mere proof of material irregularity and inadequacy of price realized by itself are not sufficient. What the objector has to establish is that not only there was inadequacy of price realized but that, that inadequacy was caused by reasons of material irregularities or fraud. (Ref : AIR 1971 SC 2337 Radhey Shyam Vs. Shyam Behari Singh).”

14 However, in the present case there is a subtle distinction in as much as there was no auction sale and property which was leased out has been disposed of on acceptance of the offer made by the purchaser, who is also the lessee. In the aforesaid circumstances, whether the price realised is inadequate or not cannot be judged merely on the basis of a valuation report unless and until comparable instances are taken into consideration for the purpose of ascertaining the market price of similarly situated properties. These are all factors which the Tribunal and/or the original authority is required to bear in mind while testing the requirement of sale at the touch stone of the principles enunciated by this Court.

15 In the aforesaid set of facts and circumstances, without recording any opinion as to merits of the matter the impugned order made by the Tribunal is quashed and set aside and the appeal is restored to the file of the Tribunal for being decided afresh after hearing the parties, bearing in mind the principles of law enunciated hereinbefore as well as those that may be pointed out at the time of hearing. The petitions are allowed to the aforesaid extent. Rule made absolute. There shall be no order as to costs.

16 At this stage, Mr. Merchant appearing on behalf of respondent No.4 states that the parties may be directed to maintain status-quo till the appeal is disposed of by the Tribunal and the Tribunal may be directed to take up the appeal within a time bound frame. It will be open to the appellant to move the Tribunal in this regard. Needless to state that in the event such an application is moved by the appellant before the Tribunal the Tribunal shall deal with the said application in accordance with law. Registry to place copy of this judgment in cognate matter.

(D.A. Mehta, J)

m.m.bhatt